

Message

From: Mutter, Andrew [mutter.andrew@epa.gov]
Sent: 2/8/2019 8:48:24 PM
To: Benevento, Douglas [benevento.douglas@epa.gov]
Subject: FW: Daily News Clips, 2/8/19

From: Lynn, Tricia
Sent: Friday, February 8, 2019 1:48:21 PM (UTC-07:00) Mountain Time (US & Canada)
To: AO OPA OMR CLIPS
Subject: Daily News Clips, 2/8/19

[Toledo Blade: Environmental law center brings new lawsuit over algae cleanup](#)

[NBC Chicago: EPA to Meet With Sterigenics Amid Calls for Action](#)

[The Times of Northwest Indiana: EPA pins another airborne toxic metal on Whiting Metals; company says it's 'a complete lie'](#)

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Toledo Blade: Environmental law center brings new lawsuit over algae cleanup

<https://www.toledoblade.com/local/courts/2019/02/07/environmental-law-center-brings-new-lawsuit-over-algae-cleanup/stories/20190207181>

By TOM HENRY, FEB 8, 2019 3:15 AM

A Midwest-based environmental law center that believes western Lake Erie's chronic algae problem can best be handled through the mandate of a federal court order has reshaped and refiled its request.

The Environmental Law & Policy Center on late Thursday brought a new lawsuit against the U.S. Environmental Protection Agency over the pace and scope of the Ohio EPA's cleanup strategies. It is seeking a court order for substantial progress to be made by specific deadlines between now and 2025. It also said it is seeking a court order for "public accountability."

The case was filed in U.S. District Court in Toledo, the same court where the ELPC's original complaint had been filed.

Toledo-based Advocates for a Clean Lake Erie is listed as a co-plaintiff, while acting U.S. EPA Administrator Andrew Wheeler and Cathy Stepp, the agency's Midwest region acting administrator, also are named as co-defendants. The 33-page complaint accuses the federal environmental agency and its directors of being too soft on the Ohio EPA, in regard to cleanup efforts that state agency had been directing on behalf of the former Kasich administration and, now, on behalf of Gov. Mike DeWine.

The legal center argues that residents of the western Lake Erie region will never get the water quality they need unless the U.S. EPA requires the state environmental protection agency to cap pollution discharges through what's known as a Total Maximum Daily Load, or TMDL, program.

The former Kasich administration put a cleanup strategy in place that focused on reducing algae-forming phosphorus from the basin's most distressed waterways. But the ELPC claims that is not aggressive enough, in part because it is non-binding itself and based around non-binding goals negotiated with Michigan and Ontario.

The lawsuit contends a TMDL is required under the federal Clean Water Act, and accuses the U.S. EPA of not enforcing that act.

Without a binding, more aggressive remedy, the Ohio EPA "will be able to continue dragging its feet and failing to protect western Lake Erie waters for many years more with limited legal and public accountability, while people in Ohio and the entire region suffer significant harm from recurring outbreaks of harmful algal blooms," the newest lawsuit states.

The original action brought by the ELPC focused on the U.S. EPA's willingness to let the state agency avoid issuing an impairment designation for western Lake Erie - despite Michigan's decision to do so for its smaller portion the lake.

Senior Judge James G. Carr dismissed that case in October after stating in open court it would be cleaner as a matter of law to handle dispute over cleanup strategies separate from the impairment designation, which the Kasich administration eventually made.

The DeWine administration has not stated publicly yet if it plans to keep the Kasich administration's cleanup strategy in place, or move on to something else. The U.S. EPA has declined comment all along, citing its policy against commenting on pending litigation.

Mr. DeWine's press secretary, Dan Tierney, stated only that the lawsuit "is being reviewed by Ohio EPA."

"The Clean Water Act provides a specific legal pathway to reduce phosphorus pollution causing harmful algae blooms in western Lake Erie, but U.S. EPA and Ohio EPA refuse to follow the law," Howard Learner, ELPC executive director, said.

Mike Ferner, ACLE coordinator, said he wants the court to keep the two agencies from getting away "with simply lip service."

NBC Chicago: EPA to Meet With Sterigenics Amid Calls for Action

<https://www.nbcchicago.com/news/local/EPA-Meets-With-Sterigenics-Amid-Calls-for-Action-505525001.html>

By Ash-har Quraishi, Feb 7, 2019 at 4:20 PM

Illinois officials are urging the Environmental Protection Agency to take "swift and effective action" following reports of elevated levels of ethylene oxide concentrations surrounding a suburban Chicago Sterigenics facility.

In a joint statement Thursday Gov. J.B. Pritzker and Attorney General Kwame Raoul urged the EPA to "protect the health and safety of families living near the [Willowbrook] facility."

"Recent media reports of alleged improper handling of dangerous chemicals at the Sterigenics facility in Willowbrook and reports of elevated EtO levels within the Willowbrook community are deeply disturbing, and we urge the United States EPA to take swift and effective action to protect the health and safety of families living near the facility," the statement read.

The Illinois EPA and U.S. EPA are expected to meet with Sterigenics Thursday.

"After this meeting, we will evaluate any outcomes and exercise all available legal authority to protect the community from this exposure," Pritzker and Raoul's statement read.

New air-quality metrics released by the U.S. EPA this week revealed that the two sites closest to the suburban Chicago Sterigenics facilities have the highest ethylene oxide concentrations.

The EPA posted the results of 12 days of air-quality testing from late November into mid-December. One of the two locations with the highest concentrations include the Willowbrook Village Hall.

1984 Document Details EPA's Concerns of Sterigenics Plant

Average readings were a little over 2 micrograms per cubic meter, with readings as high as 10 or 11. Environmental health experts said the data confirms prior modeling data that went into the calculations, indicating the cancer risk at more than six extra cancers per 1,000.

The EPA considers one extra cancer per million as acceptable.

The EPA said that downwind of the Sterigenics facility, the concentrations in the community have been as high as 1.7 micrograms per cubic meter.

EPA Tests Water at Homes Near Willowbrook Sterigenics Plant

That's much too high for residents who have been fighting to shut down the facility since they found out about the carcinogen in the air this past summer.

"They need to do what's right and protect this community and these children," said Sri Rao of Stop Sterigenics. "Levels at these schools are hundreds of times higher than the acceptable actual levels. This has to stop. Our children are being poisoned. We are being poisoned."

"We don't need any more tests," said Neringa Zymancius of Stop Sterigenics. "We are not lab rats for them to conduct testing to see how far they can keep releasing emissions until we all start dying."

More Questions Than Answers on Sterigenics, Residents Say

In a statement earlier this week, Raoul and DuPage County State's Attorney Robert Berlin said they are "very deeply troubled by recent media reports showing improper operations at the Sterigenics facility in Willowbrook."

"We have also since learned just this afternoon from the U.S. Environmental Protection Agency that 12 more days of EtO sampling results from November and December 2018 show a clear link between EtO emissions from the Sterigenics facilities and elevated EtO levels within the Willowbrook community," they said. "The citizens of DuPage County should not have to endure this exposure to a known human carcinogen. We are coordinating our review of the data released this afternoon with the Illinois Environmental Protection Agency and the Willowbrook EtO Task Force, which includes retained environmental professionals, including toxicologists. We will exercise all available legal authority to protect the community from this exposure."

The U.S. EPA said the data is still too limited to determine the long-term health risks of the levels and expects to issue a full risk assessment in the spring.

Residents demanded an immediate shut-down of the facilities.

The Times of Northwest Indiana: EPA pins another airborne toxic metal on Whiting Metals; company says it's 'a complete lie'

https://www.nwitimes.com/news/local/lake/epa-pins-another-airborne-toxic-metal-on-whiting-metals-company/article_1f31ad3d-6947-521f-bb81-61d9b11e8a4d.html

By Lauren Cross, Feb 7, 2019

HAMMOND — The Environmental Protection Agency and owners of Whiting Metals again are at odds after the federal agency pinned their facility to recently discovered elevated air emissions of a toxic metal other than lead.

Whiting Metals operates a metals reclamation facility on about 9 acres of the former 36-acre Federated Metals property on the lake's northeast shore and has a permit to emit lead. But new air monitoring data released Thursday by EPA show elevated levels of another heavy metal — cadmium — coming from the facility, the agency said.

EPA's analysis of currently available data indicates cadmium levels were above the federal safe screening levels for acute inhalation of 30 nanograms per cubic meter on eight days between Aug. 3 and Dec. 17, EPA said.

"As with the lead data, EPA used wind direction and hours of operation to establish that Whiting Metals is the source of the cadmium. EPA will continue to evaluate the concentrations of other metals, but, at this time, just cadmium is elevated," the EPA said.

'A complete lie'

Jeff Condon, a managing partner with Whiting Metals, said Thursday that is "a complete lie."

"It wasn't us. First of all, cadmium is not involved in our process at all. There's zero cadmium in our scrap, and we've shown the data to EPA to prove it," Condon said.

Condon also denies blame for high readings of lead from air monitors that EPA and the Indiana Department of Environmental Management installed last summer just outside their plant at 2230 Indianapolis Blvd. in Hammond.

He said it's likely the elevated cadmium levels are coming from a portion of the former Federated Metals site that was once owned by the now-bankrupt ASARCO and was the subject of an EPA cleanup completed in 2017.

Condon said EPA and IDEM need to do more to fully contain contaminants at the site, but there's no money left. Ore from Federated Metals' smelting activities is still strewn throughout the northwestern part of the site, which Whiting Metals does not own. Federated Metals' 330-foot-tall baghouse stood there until it was demolished in July 1991.

"There's still stuff from the old baghouse, and I told them, 'Look, there's still pieces of slag on the ground.' This stuff isn't our problem," Condon said. "We cleaned the 9 acres we own. We did our part."

Condon and Alex Gross, managing partner, purchased part of the former Federated Metals site in 2007 and received letters from EPA, IDEM and Federated Metals' parent company, ASARCO, saying they would not be held liable for past contamination of the property.

Eight days of high readings

In a statement to news outlets Thursday, EPA said EPA and IDEM began receiving information in late October about cadmium, arsenic and manganese being detected by the monitors near the Whiting Metals facility.

"EPA compared their concentrations to current health benchmarks and determined that, of all the metals measured, cadmium concentrations were elevated on certain days," according to the EPA.

Elevated means the readings were above the Agency for Toxic Substances and Disease Registry's "acute inhalation minimal risk level for cadmium," EPA said.

"Exposure to a level above the MRL does not mean that adverse health effects will occur. Rather, it indicates the need to investigate the situation more closely," EPA said.

EPA and IDEM issued notices of violation on Nov. 8 to Whiting Metals for excessive lead emissions from the facility.

'It's criminal'

Marisa Rowden, a homeowner in Whiting, said the cadmium findings were not alarming because residents have suspected this for some time, but they are a serious cause for concern.

"I just think it's criminal. You're polluting an entire community. How many times do companies get to get away with this? When is enough enough? When is (EPA and IDEM) going to put their foot down?" she said.

She said residents also need more concrete answers about the air and soil pollution in the Robertsdale neighborhood of Whiting and Hammond. Rowden lives just north of the boundaries of an area designated for lead cleanup by the EPA, she said.

An Amazon soil test kit revealed her yard tested at 323 parts per million, which is slightly under the federal threshold of 400 ppm that triggers soil cleanup in residential yards. While that's the federal threshold, states like California have set the health standard for residential soil at 80 ppm.

"That concerns me," she said. "We're not getting the protection we need."

Rowden is a leading member of a new local environmental community group, SWAN — or Saving Whiting and Neighbors — that been formed in light of the discovery of dead swans on George Lake in Hammond. The group is focused on the health of residents and wildlife in the area and advocating at all levels of government for change.

SWAN's next meeting is from 3 to 5 p.m. Feb. 9 at the Whiting Family YMCA, 1938 Clark St., in Whiting. She said EPA's release of new cadmium data and other air quality data will be discussed, she said.

Water and Wastes Digest: EPA ADVANCES INFRASTRUCTURE AGENDA

<https://www.wwdmag.com/funding/epa-advances-infrastructure-agenda>

Feb 8, 2019

The U.S. Environmental Protection Agency (EPA) has accelerated investment in the nation's aging water infrastructure.

"EPA is delivering on President Trump's promise to jump-start critical infrastructure projects that will not only enhance environmental protections but also grow the economy," said Andrew Wheeler, EPA Acting Administrator. "Under President Trump, EPA has issued seven WIFIA loans to help finance over \$4 billion in water infrastructure projects that will improve water quality and create up to 6,000 jobs. By clearly defining where federal jurisdiction begins and ends, our new proposed Waters of the U.S. definition will provide states and the private sector the regulatory certainty they need to develop and streamline projects that will modernize our nation's aging infrastructure."

According to an EPA release, they have moved President Donald J. Trump's infrastructure agenda forward by working to get the financing, tools and resources EPA's state, local, tribal and other partners need to modernize outdated water infrastructure while improving local water quality, creating jobs and better protecting public health.

One accomplishment of significance is the use of Clean Water and Drinking Water State Revolving Funds (SRFs), which play an integral role in EPA's efforts to help communities replace or upgrade aging or inadequate drinking water and wastewater infrastructure through low-interest loans. According to the EPA, the SRFs committed \$9.6 billion in drinking water and clean water infrastructure loans and refinancing and disbursed \$8.8 billion for drinking water and clean water infrastructure.

In West Virginia, EPA's water infrastructure funding is supporting small towns and rural communities in need of upgrades to their wastewater and drinking plants, such as the Town of Pennsboro in Ritchie County.

In the mid-Atlantic Region, EPA's largest SRF project undertaken to date is a upgrade of the sludge handling facility for the City of Reading's wastewater treatment plant in Reading, Pa. Pennsylvania Infrastructure Investment Authority financed this CWSRF project for \$149 million at 1% interest for 20 years, which produced a calculated subsidy value of more than \$21 million.

The EPA is also funding regional projects in Grand Forks, N.D., Yankton, S.D., Logan City, Utah, Durango, Colo., and many more.

The EPA Region 6 is also continuing to partner with the U.S. Army Corps of Engineers. Together, they have ensured new large water-supply project would move forward.

Seattle Times: EPA ices Washington state's effort to regulate hot water in Columbia, Snake rivers

https://tdn.com/news/state-and-regional/epa-ices-washington-state-s-effort-to-regulate-hot-water/article_71057b7e-3101-57a1-bebc-0cd893e5d04c.html

Lynda V. Mapes, Feb 8, 2019

A move to initiate state regulation of salmon-killing hot water in the Columbia and Snake rivers has been iced by the Trump Administration — for now.

The state Department of Ecology has initiated a public comment process on draft permits that would enable it to enforce state water-quality standards at federal dams, including temperature.

But on Friday night the U.S. Environmental Protection Agency wrote to the department to announce it is yanking the draft permits that were under review. That has the effect of stopping, at least for now, Ecology's effort to enforce its water quality standards at federal dams for the first time.

Ecology was surprised by the move and is seeking more information — and not backing down.

"I'm surprised at EPA's unusual request," said Maia Bellon, director of Ecology, in an email to the Seattle Times. "We've asked EPA to explain their motives, but I am concerned that this may signal the federal government backing away from a commitment to protect the water quality of the Columbia and Snake rivers. Washington state has no intention of abandoning our rivers and our salmon. We have no plans to halt our current public comment period."

A spokesman for EPA declined to comment.

Gov. Jay Inslee wants Ecology to stand firm. "...the governor is fully committed to partnering with Ecology to ensure both federal and state clean water standards are upheld and enforced," Tara Lee, spokeswoman for the governor wrote in an email. "The Trump Administration must do its part to protect our state's salmon and waters."

The issue first arose when the nonprofit Columbia Riverkeeper sued the U.S. Army Corps of Engineers over oil discharges into the Columbia and Snake rivers from federal dams. In a legal settlement, the Corps was required to seek pollution

discharge permits from the EPA. Draft permits for nine federal dams were issued by EPA, and were before Ecology for review until last Friday night.

Under the Clean Water Act, the state has the option to invoke its authority to condition the federal permits on also meeting all of its state water quality standards. It was former Washington Attorney General and later Gov. Christine Gregoire who fought all the way to the U.S. Supreme Court to secure the state's ability under the Clean Water Act to assert the state's standards in its waters.

At stake in this situation is the state's ability to act on a range of issues that directly affect salmon survival in the Columbia and Snake, including water temperature.

During the summer, both rivers in places routinely exceed the state's uppermost temperature standard of 68 degrees — often for weeks at a time. That is because of the cumulative warming caused by climate change since 1960, combined with the effects of the dams, a separate draft EPA analysis has determined.

But in a letter from Daniel Opalski, director of the EPA office of Water and Watersheds, the agency asked for return of its materials and the draft permits they support, and stated the agency would be back in touch "when we determine that a renewed request for water quality certification is appropriate." No time frame was provided as to re-initiating the process to issue the pollution-discharge permits.

Brett VandenHeuvel, executive director of Columbia Riverkeeper, said he hopes the state will stick to its guns on improving water quality in the Columbia and Snake.

"It feels like the Trump Administration is trying to bully the state of Washington, and Washington is not easily bullied," VandenHeuvel said. "They don't like Ecology saying they are going to assert some authority and they (EPA) are taking their ball and going home."

In her response to EPA sent Feb. 5, Heather Bartlett, manager for Ecology's Water Quality Management program, stated Ecology is continuing its public comment process on the draft-pollution permits.

Further, she wrote, the department is not waiving its authority to condition the permits, so the state can regulate water quality standards at the dams.

What happens next is anyone's guess, said Colleen Keltz, communication manager for Ecology's water quality program. "This is all very unusual, and by no means following a regular process," Keltz said. "Do they intend to come back quickly with permits or not?"

National Law Review: RFA President And CEO Appeals To EPA Administrator On RFS Reset Rule

<https://www.natlawreview.com/article/rfa-president-and-ceo-appeals-to-epa-administrator-rfs-reset-rule>

By Lynn L. Bergeson, February 8, 2019

On January 29, 2019, the Renewable Fuels Association (RFA) President and Chief Executive Officer (CEO), Geoff Cooper, submitted a letter to EPA Acting Administrator, Andrew Wheeler, regarding the Renewable Fuel Standard (RFS) Reset Rule. Addressing EPA's final RFS rule that would be released in Spring 2019 resetting statutory RFS blending obligations for 2020, 2021, and 2022, as well as biomass-based diesel blending obligations for 2021 and 2022, the letter reflects RFA's expectations as EPA completes the rulemaking. RFA would like EPA to use the Reset Rule "as an opportunity to adjust future implied blending obligations for conventional renewable fuels" accounting for three considerations:

1. The 500 million gallons of renewable fuel waived improperly from the 2016 standards;

2. The 232 million Renewable Identification Number (RIN) write-off from the Philadelphia Energy Solutions Refining and Marketing, L.L.C. bankruptcy settlement; and
3. The 2.25 billion RIN values attributable to 48 small refinery exemptions granted in 2016 and 2017.

In his letter, Mr. Cooper claims that these three considerations resulted in ethanol plant idling/shutdown, layoffs, and decreased demand and prices for farmers. Mr. Cooper, therefore, requests that the aforementioned considerations be accounted for in the implementation of the Reset Rule, stating that the rule “provides the perfect vehicle for EPA to make appropriate adjustments to ensure the statutory volumes are met” and “satisfies the Congressional intent behind the RFS program.”

EHS Daily Advisor: House Leaders (Again) Request Info on EPA Enforcement

<https://ehsdailyadvisor.blr.com/2019/02/house-leaders-again-request-info-on-epa-enforcement/>

By William C. Schillaci; Feb 8, 2019

Second to the rollback or potential rollback of major air, water, and vehicle regulations issued by the Obama EPA, new Democratic leaders in the House seem most alarmed by what they perceive to be the current EPA’s changed stance on enforcement.

These concerns were expressed in a December 2018 letter to Acting Administrator Andrew Wheeler, which included seven multipart questions requesting clarification of “changes the Administration made to EPA’s enforcement program.” That letter was sent by three ranking members of House committees—all Democrats who now chair those committees. In a new letter sent to Wheeler February 1, 2019, the three chairs state that the administrator and the EPA have not provided the information requested in the first letter. Accordingly, the chairs repeat their concerns and requests for information and ask that those requests be met by February 15, 2019.

Media News Stories

The two letters mention “EPA documents and press reports over the past year that indicated several disturbing trends, including a decline in the number of enforcement cases initiated; a reduction in enforcement staff; an overreliance on state enforcement programs; and an increased political review of potential or pending enforcement actions.”

As with the first letter, the follow-up was signed by Rep. Frank Pallone, Jr. (NJ), who now chairs the House Committee on Energy and Commerce, the lead environmental committee in the House; Rep. Paul Tonko (NY), who now chairs the House Subcommittee on Environment and Climate Change; and Rep. Diana DeGette (CO), who now chairs the House Subcommittee on Oversight and Investigations.

The letters rely on news reports from The New York Times (Times), The Washington Post, and NBC News, as well as EPA memos and e-mails and a report by the EPA’s Office of Inspector General to paint a picture of an Agency that in 2018 reached a “historic low” across the board for enforcement actions.

“The number of new civil and criminal cases, defendants charged, and federal EPA inspections and evaluations all reached their lowest levels in at least a decade, according to the data,” write the Congress members.

Among several data points, the letter notes monetary penalties. “The Agency sought civil penalties of about \$50.4 million from polluters for cases initiated under Mr. Trump,” the lawmakers state, based on a Times article. “Adjusted for inflation, that is about 39% of what the Obama administration sought and about 70% of what the Bush administration sought over the same time period.”

OECA Staff Down 15.7%

The chairs indicate that the enforcement reductions appear to result from several developments, including a 15.7% drop in staff between January 2017 and August 2018 at the EPA’s Office of Enforcement and Compliance Assurance.

But the deeper concern appears to be “political review” of enforcement activities; that is, policy changes that require career EPA enforcement staff to submit their enforcement plans to EPA political appointees for approval before taking further action. The letter lists five EPA memos that scale back the enforcement discretion of enforcement staff. For example, a March 2018 memo from the OECA’s assistant administrator to regional enforcement personnel instituted interim procedures requiring early notice to EPA political appointees of civil judicial referrals to the U.S. Department of Justice.

“We are concerned that headquarters review will cause further delays in the enforcement process,” write the Democrats. “According to Justin Pidot, former deputy solicitor for land resources at the Interior Department, ‘[t]he notion that this process will speed up enforcement is laughable to me ... anytime you bring in the front office, everything slows down.’”

The revised policies may also impact enforcement at the state level, say the lawmakers, particularly in states that are “philosophically opposed to taking enforcement action.”

The letters requests information about vacated positions; whether there was any analysis about how the vacancies would impact enforcement; how requests by enforcement staff to acquire information from regulated sectors have been handled; referrals to the DOJ; and how much time the OECA’s assistant administrator is spending on reviewing these referrals.

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